SVEN HAAVIK,

Appellant,

vs.

ALASKA PACKERS ASSOCIATION,

Appellee.

BRIEF OF APPELLEE

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

SVEN HAAVIK,
Appellant,

vs.

ALASKA PACKERS ASSOCIATION,
Appellee.

NO. 627

BRIEF OF APPELLEE

STATEMENT OF CASE.

The statement of facts set out in appellant's brief will be accepted as substantially correct for the purpose of this appeal.

There are four questions presented:

1. Is the Alaska poll tax law of 1919 in conflict with the Federal Constitution?

2. Is that Act in conflict with the Organic Act of the Territory, to-wit, the Act of August 24, 1912, creating a legislative assembly for the Territory?

3. Is a license tax imposed upon non-resident fishermen in conflict with the Federal Constitution?

4. Is that Act in conflict with the Organic Act of the Territory?

ARGUMENT

THE POLL TAX LAW.

I.

Counsel for appellant does not point out the particular clauses of the Federal Constitution which he claims are violated by the poll tax law in question, but there are expressions in his brief intimating that in counsel's opinion the poll tax law violates that part of the Fourteenth Amendment to the Constitution which provides that:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

He also urges that the poll tax law interferes with interstate commerce and, as such, trenches upon the exclusive authority of Congress over that subject.

A.

So far as the Fourteenth Amendment is concerned it may be pointed out that it is not addressed to either Federal Government or the Territorial Government. It is expressly designed to be a limitation upon the authority of the sovereign states.

Territory of Alaska vs. Troy, 258 U. S. 101.

Even if this were not so, it could not be said that the poll tax law in question deprives any person of property without due process of law. The cases relied upon by counsel are merely to the point that the state or municipality can not levy a tax upon property over which such state or municipality has no jurisdiction. On what theory of law can it be contended that the legislature of Alaska has no jurisdiction over persons within the boundaries of the Territory?

The power of Congress over the Territory is plenary.

Binns vs. U. S. 194 U. S. 486.

National Bank vs. Yankton County, 101 U. S. 129.

The jurisdiction of the local legislature is coextensive with that power to the extent delegated. Anyone entering the Territory subjects himself to that jurisdiction, and, assuming that Congress has delegated to the Territory the proper powers, a poll tax might be levied upon any individual in the Ter-

ritory so long as such law or tax did not violate any provision of the Federal Constitution limiting the power of Congress in dealing with the Territory.

Talbott vs. Silver Bow County, 139 U. S. 438.

B.

In the fact that the salmon caught by appellant was intended for exportation counsel finds his reason for asserting that the poll tax law is an interference with interstate commerce.

If this doctrine be accepted by the Court it will give the Federal Government jurisdiction over all industries whether manufacturing, mining, forestry or agriculture, because all that is produced or manufactured, is intended for exportation or to take its place in one form or another in interstate commerce.

The question here raised by counsel has been fully disposed of heretofore by this Court.

Oliver Iron Co. vs. Lord, decided May 7th 1923.

Heisler vs. Thos. Colliery Co. et al, 260 U. S.

Geer vs. Connecticut, 161 U. S. 519.

II.

The question of whether or not Congress had delegated to the legislature authority to enact the law in question was settled by the United States Circuit Court of Appeals for the Ninth Circuit in *Alaska*

kers Association vs. Hedenskoy 267 Fed. 154. hat case it was held not only that the Territory the proper authority but that the law in ques- was properly applied to fishermen who came pend the summer in the Territory for the pur- e of fishing.

Under the circumstances, it is not likely that Court will review the correctness of that con- ction in any case involving no more than five ars and which raises no constitutional problem, cially as this court has already denied an ap- ation for a writ of certiorari in the Hedenskoy .

Hedenskoy vs. Alaska Packers Assn., 254 U. S. 652.

The question in this case is not whether or not legislature has authority to levy a tax upon peo- who merely pass through the Territory or on ple who come to the Territory merely for the pose of transitory commercial enterprises in nection with interstate commerce. The fisher- come to spend the entire summer season, and, n there, are a part of the industrial life of the th. They remain for the fishing season to carry he work in the main industries of the Territory, the question is whether or not, by reason of the that they maintain their homes in some other s of the world, where they spend their winters, Territory is deprived of jurisdiction over them he extent of forcing them to contribute some-

thing to the maintenance of those institutions erected and maintained for their protection.

The facts which give to a state taxing jurisdiction over property are sufficient to give taxing jurisdiction over persons.

Alaska Packers Association vs. Hedenskoy 267 Fed. 154.
Fennell vs. Pauly, 83 N. W. 799.
Maurer vs. Cliff, 94 Mich. 194 (53 N. W. 1055).

This court has recognized the doctrine that for the purpose of taxation the question is whether or not the property is only in transitu.

Kelley vs. Rhoads, 188 U. S. 1;
Brown vs. Huston, 114 U. S. 633;
Pullman Car Co. vs. Penn. 141 U. S. 18.

This Court has held that the taxing power of a territory is limited only by the provisions of the Federal Constitution applicable to the territory and by the express limitations of the Organic Act creating the legislative assembly.

Talbott vs. Silver Bow County, 139 U. S. 438.

In the Talbott case it was held that the doctrine of *McCullough vs. Maryland* 17 U. S. 316 does not limit the power of a territory and that the taxing power of the latter, to that extent, is greater than that of a state.

The authority to levy a poll tax upon all the people within the Territory, whether actual resi-

dents or not, has been exercised by the Legislature of the Territory of Alaska from the time of the first session. The Act creating the legislature was approved August 24, 1912. The first session of the legislature convened in March, 1913, and by May 1 it had enacted Chapter 54 of the Laws of 1913 imposing "a poll tax upon each male person * * * within the Territory of Alaska or the waters thereof."

That law, to be sure, was held void by the United States Circuit Court of Appeals for the Ninth Circuit because it made the United States Commissioners the tax collectors, in violation of the Organic Act.

Callaham vs. Marshall, 210 Fed. 230.

To cure this defect in the Organic Act and to authorize the Territory to exercise the power it assumed, Congress passed an Act, approved August 29, 1914, entitled "An Act to amend an Act entitled 'An Act creating a legislative assembly in the Territory of Alaska, and conferring legislative power thereon, and for other purposes' approved August 24, 1912."

The present poll tax law was certified to Congress as required by the Organic Act. It was held valid as to non-resident fishermen in the Hedenskoy case, and Congress has made no move to repeal it or disapprove it. Under the circumstances it

will be assumed that the practical interpretation placed upon the Organic Act is ratified by Congress.

Clinton vs. Englebret, 13 Wall 434. (446)

III.

LICENSE TAX ON NON-RESIDENT FISHERMEN.

Counsel urges that the license tax on non-resident fishermen is in conflict with that part of the Federal Constitution which provides that "citizens of each state shall be entitled to all the privilege and immunities of the citizens of the several states."

But it will be observed that the discrimination complained of is not a discrimination between citizens of various states. If a discrimination is to be found it is in favor of the citizens of a territory and against the citizens of all the states. All the states are placed on the same footing. There is no constitutional objection to such discrimination, and there is nothing in the Constitution to prohibit a state or the Federal Government from discrimination against citizens of a territory and in favor of citizens of a state.

This feature of the Constitution was called to the Court's attention in the Troy case, where the Territory complained that the Merchant Marine Act discriminated against citizens of the Territory and in favor of citizens of the states. This Court

replied that this provision did not protect the citizens of the Territory against such discrimination, because the term "states" when used in the Constitution precluded the idea of a territory.

Territory of Alaska vs. Troy, 258 U. S. 101;
McFadden vs. Blocker, 3 Indian Territory 277; (58 L. R. A. 894).
Sutton vs. Hayes, 17 Ark. 462.
Tiger vs. Western Investment Co., 221 U. S. 286.

But, even were not this so, the doctrine would not apply to this case, for the fish and game within the Territory belong to the citizens of the Territory and need not be shared with the citizens of other states or territories. This being so, the citizens of one state have no property right in the fisheries of another state.

Laws have been frequently enacted in various jurisdictions relative to hunting and fishing which discriminate against citizens of other states. These laws have been held consonant with the Constitution of the United States for the reasons above stated.

McCready vs. Virginia, 94 U. S. 391 (24 L. Ed. 248);
Curfield vs. Coryell, 4 Wash. (U. S.) 371, (6 Fed. Cs. 3231);
Bennett vs. Boggs, 3 Fed. Cs. 1319;
State vs. Medbury, 3 R. I. 141;
State vs. Corson, 67 N. J. L. 185;

Haney vs. Compton, 36 N. J. L. 509;
State vs. Smith, 71 Ark. 478;
Ex parte Gilletti, 70 Fla. 442, (70 S. 446);
Mens vs. People, 198 Ill. 258 (64 N. E. 1106);
State vs. Leavitt, 105 Me. 76 (72 Atl. 875);
Allen vs. Wyckoff, 48 N. J. L. 90 (57 Am. Rep. 548);
State vs. Niie, 78 Vt. 266 (62 Atl. 795);
Geer vs. Connecticut, 161 U. S. 519;
Patsone vs. Pennsylvania, 232 U. S. 138.

The courts have approved of the power which the legislature of Alaska has exercised over fisheries.

In the case of *Alaska Fish Salting & By-Products Company vs. Smith*, 255 U. S. 44, this court held that the legislature had authority to prohibit the catching of herring for rendition into oil and fertilizers, and to do so by the taxing power. That authority has been exercised by the legislature from the time of its first session and had met with no disapproval at the capital of the country. That power, too, must therefore be construed as having been ratifide, in the event it should be found that it has not been expressly conferred upon the legislature. Should there be any doubt on the subject of the authority of the legislature a reference to the debates on the floor of the House at the time the Organic Act was passed will show very clearly that it was the intent of Congress to give the legislature

full authority to enact laws regulating the fisheries, so long as those laws did not conflict wtih the statutes on that subject already enacted by Congress.

Respectfully submitted,

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